

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4539 of 1998

TO

FIRST APPEAL No 4545 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

NATHAJI KALAJI

Appearance:

MR PRASHANT G DESAI for appellants in all the First Appeals

MR PV NANAVATI for Respondent No. 1 in all First Appeals

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/04/99

COMMON ORAL JUDGEMENT

This batch of seven First Appeals is directed against the Reference Court orders dated 20th April, 1998 passed in Land Acquisition Cases Nos.393/91, 394/91, 546/91, 549/91 and 667/91 (subject matter of First Appeals Nos.4539/98 to 4543/98) and 30th April, 1998 in Land Acquisition Cases Nos.547/91 and 548/91 (subject matter of First Appeals Nos.4544/98 to 4545/98). As there are identical facts involving common question of law on the basis of which two orders dated 20th April, 1998 and 30th April, 1998 have been challenged, we propose to decide all these seven First Appeals by this common judgment and order.

2. In the matter of acquisition of land for Narmada Main Canal, notification was issued under sec.4 of the Land Acquisition Act on 3-12-1985 in respect of the land concerned in all these seven matters and the notice under sec.6 was issued on 29-1-1987. The Land Acquisition Officer passed the award on 21-1-1989 granting compensation to the claimants at the rate of Rs.3.50 per sq.mtr. with other allied and statutory reliefs. These claimants being dissatisfied with the rate at which the compensation was granted, moved reference under sec.18 of the Land Acquisition Act and the Reference Court has passed the impugned orders dated 20th April, 1998 and 30th April, 1998 as aforesaid granting additional compensation at the rate of Rs.53/- per sq.mtr. i.e. the claimants have been held to be entitled to be paid the compensation at the rate of Rs.56.50 (3.50+53).

3. The land of the claimants is situated in Village Nabhoi of Gandhinagar Taluka. The claimants led oral evidence at exh.13 at page 53 of the paper book which has been supplied on behalf of the Government. Besides the oral evidence of Shri Vasrabhai at exh.13, certain documents and the judgments of the Supreme Court and the judgments rendered by this Court in First Appeal No.4649 of 1996 dated 22-7-1997 and the judgments rendered by this Court in First Appeal No.2481 of 1997 dated 3-4-1998 and certain Village forms etc. were filed. Exhs.19,20, 21 and 22 were also filed. On behalf of the department, the statements of Mr.V.H.Desai, Deputy Executive Engineer and that of one Shri Jayesh Ajitbhai, Land Acquisition Officer were recorded at exhs.31 and 45. The impugned orders have been assailed by the appellants in all these cases on the ground that the additional amount of compensation has been granted by the Reference Court

without any evidence and the reasons which have been given so as to consider the land in question to be in parity with the land which was concerned in other land acquisition case of Village Karai as has been referred to by the Reference Court is without any material and without assigning any reasons. The learned Government Pleader Mr.P.G.Desai was at pains to point out that the land in question has no parity with the land which was concerned pertaining to Village Karai and even from Limbadia, the land in question is at a distance of 12 kms. and the Reference Court had no justification to enhance the compensation as has been ordered. It has been submitted that the Reference Court did not consider the factual position as was obtaining in this case and has also not considered the question with regard to the future development and that without following the norms with regard to the comparison of this land it has enhanced the rate of compensation which is highly excessive and unreasonable. He has also placed reliance on a Supreme Court decision reported in 1998 (7) Judgments Today page 397 and has submitted that the heavy burden lay upon the claimants to prove the potential of the land in question.

4. Mr.V.S.Parikh, appearing on behalf of the respondents, made straight reference to the map exh.24 which is a map prepared by the Ahmedabad Urban Development Authority (AUDA) and as per this map exh.24, he has pointed out that the land in question of Village Nabhoi is just near the junction of the river and the Narmada Main Canal and has also submitted that it is on the side of the road leading to Gandhinagar from Ahmedabad and is at a distance of about 3 km. only from Indira bridge. He has also pointed out that the land of Village Karai is away from the Narmada Canal and is in the interior and the distance between the canal and the land of Village Karai is more than the land in question and the land of Village Limbadia is far away from the river. He has also pointed out that the land in question of Village Nabhoi is also an agricultural land as is the land of Village Karai rather the land which has been acquired in these matters is at a better and prime location in comparison to the land at Village Karai and Limbadia.

5. We have considered the submissions which have been made at the bar and have also gone through the relevant record which is available with us and have also gone through the impugned order passed by the Reference Court. The Reference Court has, in fact, after considering the evidence and the material, made reference

to a decision of this Court rendered in First Appeals Nos.4649/96, 4658/96, 4825/96 to 4847/96 and 4374/96 to 4385/96 dated 22nd July, 1997. In these cases, the Reference Court had awarded the additional compensation at the rate of Rs.68/- per sq.mtr., the same was reduced at the rate of Rs.57/- per sq.mtr. and the Supreme Court reduced it further to Rs.53/- per sq.mtr. On the basis of these decisions the Reference Court has found that in this group of matters, the date of notification is the same as was in the cases which were dealt with by the High Court in the aforesaid appeals and by the Supreme Court thereafter. It has also been mentioned that the lands in question in the cases which have been earlier decided by the High Court and by the Supreme Court and the land in question which is concerned in this group of matters are situated on the opposite banks of the same river in the same taluka, i.e. Gandhinagar and while following the decision of the Supreme Court and considering that two such cases are identical, the Reference Court has also awarded the compensation at the rate of Rs.53/- per sq.mtr. Having meticulously examined the material available on record and the evidence which was made available in this case and having gone through the map exh.24, we find that the land in question of Village Nabhoi is situated just near the junction of the canal and the river which is only little away from the highway leading to Gandhinagar. The distance of the land in question from the highway is much less in comparison to the land of Village Karai which was the subject matter of the First appeals to which the reference has been made in the impugned order by the Reference Court. The map exh.24 which is prepared by the AUDA makes it very clear that not only the Village Karai, but even Village Limbadia is far away from highway as also from the river. The land in question of Village Nabhoi as well as the land in question of Village Karai are agricultural lands and we find that the Reference Court has not committed any error in treating this land to be similar to that of Karai and, therefore, he has rightly followed the decision which has been rendered by the Supreme Court whereby the compensation has been granted at the rate of Rs.53/- per sq.mtr. The decision rendered by the Division Bench of this Court on 22-7-1997 in First Appeals Nos.4649/96 to 4658/96 with First Appeals Nos.4825/96 to 4847/96 and First Appeals Nos.4874/96 to 4885/96 shows that in that case there was no dispute about the fact that the claimants should not be entitled to the benefit of provisions of Secs.23(1)A and 23(2) of the Act in respect of the additional amount of compensation. The Division Bench has also recorded in para 7(x) that since the learned advocate, Mr.Patel for

the respondents has claimed only an amount of Rs.57/- per sq.mtr. by way of compensation for the acquisition of lands covered under the impugned award, it was not necessary to decide other aspects in greater details. In the opinion of Division Bench which decided these First appeals, amount of Rs.57/- per sq.mtr. was found to be just and reasonable. In the result, the award in that case was modified and it was ordered that the amount of Rs.70/per sq.mtr. totally awarded to the claimants stand modified and substituted with an amount of Rs.57/- per sq.mtr. only in all as total compensation to the claimants for their acquired lands and the claimants will not be entitled to the amount on interest on solatium and solatium on additional amount. The rest of the benefits available under sec.23(1)A of the Act will be available to the claimants. These Appeals were accordingly partly allowed and the awards were partly modified and respondents were also directed to deposit the amount of compensation as per the judgments/awards within a period of eight weeks from the date of receipt of the writ of this order before the Reference Court. A copy of the Supreme Court's order dated 13-2-1998 that has been passed on record the contents of which are reproduced as under:

"The impugned judgment of the High Court proceeds on the basis of Exhibit 27 which was the award granting the amount of Rs.37/- per sq.mtr. of lands in the adjoining Village notified under Section 4 notification issued on 10-3-1983. There is no other evidence of sale instances put forth by either side. The High Court has taken as reasonable appreciation per year, from 1983 to 1987, being the year of the Notifications in the present case and arrived at a figure of Rs.57/-per sq.mtr. The appellants contend that this figure is excessive and even if an annual appreciation of the market value at 10% is to be taken into account, as has been done by the High Court the appreciation for four years, would come to Rs.16/- approximately (Rs.4/- per year). In fact, this would be a little more than 10% considering the market value of Rs.57/-. The highest price which can be given is Rs.53/- per sq.mtr. instead of Rs.57/- per sq.mtr.

The learned counsel for the respondents has no objection to the rate of compensation being reduced to Rs.53/- per sq.mtr. The award of the High Court is modified accordingly and the rest of the judgment stands. The appellants

state that they would pay the amount of compensation so calculated within eight weeks from today.

The appeals are disposed of accordingly."

6. We find that once the Reference Court while passing the impugned orders dated 20th April, 1998 and 30th April, 1998 had found that the land which was acquired in the present cases was comparable with the land which was concerned in the First Appeals as above as also in the decision of the Supreme Court and if the order was passed by treating the two cases to be at par, the parity should have been given its full length meaning in totality and while fixing the rate of additional compensation at the rate of Rs.53/- per sq.mtr., the conditions which were coupled with the directions in the decision of the Division Bench should have been followed meaning thereby that it should have also directed that the claimants will not be entitled to the amount of interest on solatium and solatium on additional amount. The learned counsel for the claimants have submitted that the solatium is a statutory benefit and, therefore, no part of it could be denied. However, we find that whereas the matter was taken to the Supreme Court against the decision of the First Appeals in the aforesaid matters, and Supreme Court has only directed that the rate of Rs.57/- per sq.mtr. will stand reduced to Rs.53/-per sq.mtr. and whereas the Supreme Court has not interfered with the directions of the Division Bench that claimants will not be entitled to the amount of interest on solatium and solatium on additional amount. We also decide these appeals on the same lines and direct that the impugned orders passed by the Reference Court, i.e. 20th April, 1998 and 30th April, 1998 shall stand modified to the extent that the claimants will be entitled to be paid the compensation at the rate of Rs.53/- per sq.mtr. in all and the claimants will not be entitled to the amount of interest on solatium and solatium on additional amount and rest of the benefits available under sec.23(1)A of the Act will be available to the claimants and in case the compensation has not been paid, the respondents shall deposit the amount of compensation as per the judgments/awards within a period of eight weeks from the date of receipt of the writ of this order before the Reference Court. In all other aspects, the order as has been passed by the Reference Court is upheld.

7. Before parting with the order, we may observe that it was pointed out at the bar that the Supreme Court

has already entertained the review application/the application for clarification with regard to the order dated 13-2-1998 which has been reproduced above and it has been submitted that these matters are likely to come up before the Supreme Court and the clarification has been sought from the Supreme Court on the question of solatium and interest on solatium. In such a fact situation, we deem it appropriate to direct that in case the Supreme Court passes any order in the review application or an application for clarification, the parties on both the sides shall be at liberty to apply for the variation in terms of the decision which may be finally given by the Supreme Court in such review/clarification application alongwith the certified copy of the order which may be passed by the Supreme Court. All these seven First Appeals are partly allowed in the terms as aforesaid. In the facts and circumstances of the case, no order as to costs.

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